AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 109 of 2000

Shri Ashok Kumar Pandey & others

-Versus-

Coal India Ltd. & others

Post for order on 3rd February, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 109 of 2000

Petitioners

1. Shri Ashok Kumar Pandey, Age 41 years, S/o Shri Chirinjivi Pandey, Sr. Clerk, South Eastern Coalfields Ltd. Gevra Project, Post : Gevra Dist. Korba (CG)
2. Shri Bhagwat Prasad Patel, Age 36 years, S/o Shri C.R. Patel, South Eastern Coalfields Ltd. Gevra Project, Post : Gevra Dist Korba (CG)
3. Shri Md. Khabiruddin, Age 46 years, S/o Shri Late Ismail Mia, South Eastern Coalfields Ltd. Seepat Road Bilaspur (Chhatisgarh) 495 006
4. Shri H.K. Tripathi, Age 37 years, S/o Shri K.P. Tripathi, South Eastern Coalfields Ltd. Seepat Road Bilaspur (Chhatisgarh) 495 006
5. Shri P. Tirupati Rao, Age 41 years, S/o Shri P.K. Rao, CMPDIL, RI-V, SECL COMPLEX Bilaspur (Chhatisgarh) 495 006
6. Shri Prem Narayan Singh, Age 44 years, S/o Late R.K. Singh, CMPDIL, RI-V, SECL COMPLEX Bilaspur (Chhatisgarh) 495 006
7. Shri M.S.S.H.S. Srinivas, Age 35 years, S/o Shri M. Vishwanadham, CMPDIL, RI-V, SECL COMPLEX Bilaspur (Chhatisgarh) 495 006
8. Shri Hari Shankar Yadav, Age 39 years S/o Late B.R. Yadav, CMPDIL, RI-V, SECL COMPLEX Bilaspur (Chhatisgarh) 495 006
9. Shri B.S. Giri, Age 40 years, S/o Ramjanam Giri, SECL, Kusmunda Project
10. Shri B.J. Pandey, Age 42 years, S/o Sarb Deo Pandey, R/o, Western Washery Zone, PO-Mahuda, Distt. Dhanbad, (Jharkhand)
11. Shri Karunakar Nayak, Age 43 years, S/o B.C. Nayak, Qtr. No.B/80, Durganagar, PO Gandaghora, Distt. Jharsugada (Orissa)

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12. Shri Gopal Krishna Panda, Age 33 years, S/o Mimai Chanran Panda, Station Road, Brajrajnagar, Distt. Jharsugada (Orissa)

VERSUS

Respondents

1. Coal India Limited, 10th Netajee Subhash Road, Calcutta - 700-001 (Through Chairman)
2. South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006 (Through Chairman-cum-Managing Director)
3. Central Mine Planning & Design Institute Limited, Gondwana Place, Kanke Road, Ranchi- (Jharkhand) 834 008 (Through Chairman-cumManaging Director)
4. Director (Personnel & Industrial Relation), Coal India Limited, 10th Netajee Subhash Road, Calcutta – 700-001
5. Shri S.A. Yusuf, Chief General Manager (Personnel), Coal India Limited, 10th Netajee Subhash Road, Calcutta. 700-001
6. General Manager (Executive Establishment), South Eastern Coalfields Limited, Seepat Road, Bilaspur - (Chhatisgarh) 495 006
7. Shri R.N. Mishra Ex-Chairman-Cum-Managing Director, Central Mine Planning & Design Institute Limited, Gondwana Place, Kanke Road, Ranchi – (Jharkhand) 834 008
8. Shri J.N. Singh, Director (Personnel), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S.)
9. Shri A.K. Sahay, (Ex-CMD, BCCL) Chairman-Cum-Managing Director Naively Lignite Ltd., Naively-(Tamilnadu)
10. Shri Mithlesh Kumar Singh, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S.)
11. Shri S.S. Sokhi, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S)

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12. Shri Sambhu N. Sharma, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S.)
13. Shri Pradip Kumar Sural, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S)
14. Shri A.K. Biswas, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S.)
15. Shri V.N. Shankar, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S.)
16. Shri Sudhakar P. Wandhe, Welfare Officer (T), Through General Manager (P & A), Western Coalfields Ltd. Seminary Hills, Coal Estate, Nagpur (M.S)
17. Shri Ashwin Kumar Mishra, Welfare Officer (T), Through General Manager (P & A), Central Mine Planning & Design Institute Limited, Gondwana Place, Kanke Road, Ranchi – (Jharkhand) 834 008
18. Shri K. Suresh, Welfare Officer (T), CMPDIL, RI-V SECL COMPLEX, Seepat Road, Bilaspur – (Chhatisgarh) 495 006
19. Shri Naveen Kumar Sinha, Welfare Officer (T), Through General Manager (P & A), Central Mine Planning & Design Institute Limited, Gondwana Place, Kanke Road, Ranchi – (Jharkhand) 834 008
20. Smt. Keya Mukherjee, Welfare Officer (T), Central Coalfields Limited, Darbhanga House, Ranchi – (Jharkhand) 834 001
21. Smt. Indu Mishra, Welfare Officer (T), Central Coalfields Limited, Darbhanga House, Ranchi – (Jharkhand) 834 001
22. Shri N.S. Chouhan, Welfare Officer (T), Central Coalfields Limited, Darbhanga House, Ranchi – (Jharkhand) 834 001

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23. Smt. Rabuni Toppo, Welfare Officer (T), Central Coalfields Limited Darbhanga House, Ranchi – (Jharkhand) 834 001
24. Shri Prakash Sahay, Welfare Officer (T), Central Coalfields Limited, Darbhanga House, Ranchi – (Jharkhand) 834 001
25. Shri Shankar Choudhury Welfare Officer (T), Central Coalfields Limited, Darbhanga House, Ranchi – (Jharkhand) 834 001
26. Shri Indranil Banerjee, Welfare Officer (T), Through General Manager (P & A), Bharat Cocking Coal Ltd. PO BCCL Town Ship, Dhanbad
27. Shri Nitish R. Chatterjee, Welfare Officer (T), Through General Manager (P & A), Bharat Cocking Coal Ltd. PO BCCL Town Ship, Dhanbad
28. Shri N.R. Bhattacharjee, Welfare Officer (T), Through General Manager (P & A), Bharat Cocking Coal Ltd. PO BCCL Town Ship, Dhanbad
29. Shri M.R. Pillai, Welfare Officer (T), Through CGM (P & A), Northern Coalfields Ltd. PO Waidhan, Distt. : Sidhi (M.P.)
30. Shri Lalan Kumar, Welfare Officer (T), Through CGM (P & A), Northern Coalfields Ltd. PO Waidhan, Distt. : Sidhi (M.P.)
31. Smt. Suman Lata Deharia, Welfare Officer (T), Through CGM (P & A), Northern Coalfields Ltd. PO Waidhan, Distt. : Sidhi (M.P.)
32. Shri Md. Mobin, Welfare Officer (T), Through CGM (P & A), Northern Coalfields Ltd. PO Waidhan, Distt. : Sidhi (M.P.)
33. Shri Sanjeev Kumar Jha, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006
34. Shri K.P. Tyagi, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

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35. Shri N.K. Saltigiri, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

36. Shri Jafar Mohammad, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

37. Smt. A. Temurnikar, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

38. Shri Rajendra Kumar Panday, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

39. Shri R.P. Dubey, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

40. Shri Amitabh das, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

41. Shri Shyamal Chakraborthy, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

42. Shri Bhabani Bandhopadhyay, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

43. Smt. J.V. Ramalaxmi, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited Seepat Road, Bilaspur – (Chhatisgarh) 495 006

44. Shri Arun Kumar Jha, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited, Seepat Road, Bilaspur – (Chhatisgarh) 495 006

45. Shri R.K. Nigam, Welfare Officer (T), Through CGM (P & A), South Eastern Coalfields Limited Seepat Road, Bilaspur – (Chhatisgarh) 495 006

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46. Shri U.K. Purohit, Welfare Officer (T), Through CGM (P & A), Eastern Coalfields Limited, Santoria, Asansol (W.B.)
47. Shri P.K. Shrivastava, Welfare Officer (T), Through CGM (P & A), Eastern Coalfields Limited, Santoria, Asansol (W.B.)
48. Shri K. Ravindran, Welfare Officer (T), Through CGM (P & A), Eastern Coalfields Limited, Santoria, Asansol (W.B.)
49. Shri Awatar Singh, Welfare Officer (T), Through CGM (P & A), Eastern Coalfields Limited Santoria, Asansol (W.B.)
50. Shri K.S. Unnithan, Welfare Officer (T), Through CGM (P & A), Eastern Coalfields Limited, Santoria, Asansol (W.B.)
51. Shri Arup Sengupta, Welfare Officer (T), Coal India Limited, 10th Netajee Subhas Road, Calcutta 700 001
52. Smt. Pushpa Deb, Welfare Officer (T), Coal India Limited, 10th Netajee Subhas Road, Calcutta 700 001
53. Shri Vijay Kumar Jha, Welfare Officer (T), C/o Director (Incharge) NEC, Coal India Limited, 10th Netajee Subhas Road, Calcutta 700 001
54. M/s Indian Institute of Social Welfare and Business Management, Management House College Square West, Calcutta 700 073

Dr. N. K. Shukla, Senior Advocate with Shri Shailendra Shukla, Advocate for the petitioner.

Shri M. L. Jaiswal, Senior Advocate with Shri Alk Raj Gautam and Shri Yogesh Pandey, Advocates for the Respondents No. 1, 2 and 4 to 9.

Shri Amit Verma, Advocate for the Respondents No. 18 and 46.

Shri P. S. Koshy, Advocate for the Respondents No. 17, 19, 21, 29, 30, 32, 48, 49, 51 and 52.

Shri Manoj Paranjpe, Advocate for the Respondent No. 37.

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ORDER

(February, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. This petition filed under Article 226/227 of the Constitution of India seeks a direction against the Respondents No. 1 to 9 to appoint the petitioners on the post of Welfare Officer (Trainee) from the date of issuance of first appointment order dated 23/26.10.1998 issued by the Respondent No.5. It was further prayed that the petitioners be granted consequential benefits including confirmation/promotion, seniority, back wages and all other monetary benefits for which the petitioners are entitled in the facts and circumstances of the case.

2. The facts in nutshell are that the petitioners were working in the offices of the Respondents No.2 and 3. The Respondent No.1 is a public sector undertaking and the Respondents No. 2 and 3 are its subsidiary, as such, the Respondents No. 1 to 3 are 'State' within the meaning of Article 12 of the Constitution of India.

3. The Respondent No.1 issued a circular dated 6.3.1997 (Annexure P/1) addressed to its subsidiary companies for recruitment of Welfare Officer (Trainee) from amongst the eligible departmental candidates. The qualification prescribed in the circular was that the candidates must possess at lease 2nd class Post Graduate degree in Sociology or Social Science or Post Graduate Diploma in Labour Welfare/Personnel

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Management/Industrial Relations as recognized under the Mines Rules for working as Welfare Officer in mines. It was further provided that the eligible candidates would appear in written test to be held on 19.4.1997. Thereafter the Respondent No.2 issued another circular dated 7.4.1997 (Annexure P/4) whereby the qualification provided in the earlier circular dated 6.3.1997 was amended as under:-

> "The candidates must have passed the post graduate degree in Sociology, and Social Science or Post graduate diploma in Labour Welfare/Personnel Management/Industrial Relations as recognized under the Mines Rules for working as Welfare officer in Mines with 2nd class or at least 40% marks."

4. One more circular dated 29th/30th April, 1997 (Annexure P/6) was issued, the relevant contents of which are, as under:-

> "Kindly refer to this office circular letters No.CII/C-5A(iii)/51823(WO(T), 1797 dated 6.3.97 and No. CIL.C-5A(iii), 51823/(WO(T)/1919 dtd.31.3.1997 inviting application from amongst the eligible departmental candidates for the post of welfare officer (Trainee).
>
> In addition to the above circulars, you are also requested to kindly forward the bio-data of the non-Executives who possess MBA degree (2 years course) with specialization in personnel Management, duly recognized by DGMS, with 40% and above marks to Centralised Cell, CMPDIL, Ranchi by 10.5.97".

5. The petitioners along with respondents No. 10 to 53 and many others eligible candidates appeared in the written test held on 20.7.1997. Thereafter, successful candidates, including the petitioners were interviewed on 25th August, 1998. Pursuant to the written test conducted by the M/s Indian Institute of Social Welfare and Business Management, Management House, College Square West, Calcutta (Respondent No.54) and

interview, a panel of the selected candidates was prepared. The names of the petitioners were found in the select list but the petitioners were not given appointment order. Being aggrieved the petitioners have filed this writ petition under Article 226/227 of the Constitution of India.

6. Shri N. K. Shukla, learned Senior counsel with Shri Shailendra Shukla, learned counsel appearing for the petitioners submitted that in the selection process for which the selection of departmental candidates of the Welfare Officer-internal selection, the provisions of the Common Coal Order are applicable. According to the Common Coal order dated 16th November, 1984 (Annexure P/26) dealing with the selection for promotion from non-executive to the executive cadres, the suitability or otherwise of an employee for promotion to executive cadre, was to be determined on the basis of five factors viz. (i) Qualifications (ii) experience (iii) ACRs for the last 3 years, (iv) Written Test and (v) Interview. The maximum aggregate marks for these five factors will be 100 and minimum qualifying marks in aggregate for empanelment will be 60. For written test 40 marks were prescribed and for qualification 10 marks, for experience 10 marks, for ACRs 10 marks and for interview 25 marks. Admittedly, this process of selection from non-executive ministerial staff to the post of executive cadre(Welfare Officer). It was further submitted that Mines Rules, 1955 (which will be referred hereinafter as 'the Rules, 1955') are framed under The Mines Act, 1952 (which will be referred hereinafter as 'the Act, 1952). Rule 72 of the Rules

1955 relates to Welfare Officers, sub-rule (2) of the Rule 72 prescribes qualification as under:-

"No person shall act as Welfare officer of a mine unless he possess:-

(a) a university degree.

(b) a degree or diploma in social science (or social work) or labour welfare (recognized by the Government for the purpose of this rule) and preferably practical experience of handling labour problems in any industrial undertaking for at least three years, and

(c) a knowledge of the language of the district in which the mine is situated or the language understood by the majority of persons employed in the mine.

Provided that in case of a person already in service as a Welfare Officer in a mine the above qualifications may, with the approval of the Chief Inspector, be relaxed."

7. In the present case, it was contended that the Common Coal Order was not followed and even the circular dated 6.3.1997 (Annexure P/1) pursuant to which the petitioners along with others applied for recruitment on the post of Welfare Officer (Trainee) was amended subsequently after submission of the applications, by the orders dated 7.4.1997 and 30.4.1997 which was not permissible and against the principles of natural justice, prescription of written test for 200 marks and interview for 40 marks was also contrary to the Common Coal order and the first circular dated 6.3.1997.

8. It was next contended that the answer sheets of the written test held on 20th July, 1997 were destroyed after expiry of six months, in January, 1998. The original result sheets were sent by the Respondent No.54 to the respondent Coal India on 5th June, 1998 and second supplementary result sheet was sent on

8th June, 1998. The result of the written test was never published. The result pursuant to the written test as well as interview was also never published. The Chief General Manager (Personnel) Respondent No.5 by communication dated 15.3.1999 (Annexure P/27) requested the Respondent No.4 to clarify that no papers bearing roll No. 1/505 and 1/1858 had been received but the Respondent No. 54 had awarded 50 marks in paper 2 in respect of roll No. 1/505 when both the candidates did not appear in the written examination. The Respondent No. 54 by communication dated 19th April, 1999 informed to the Respondent No.5 that allotting marks to the candidates having roll No. 1/505 and 1/1858 was a clerical mistake on the part of the Respondent No. 54. The mistake was regretted by the Respondent No.54. The answer sheets were not made available on the ground that the institute/Respondent No.54 did not keep answer sheets for a period of six months. It was further submitted that several mistakes have crept in the selection process. Learned counsel for the petitioners lastly submitted that in view of several irregularities committed by the answering respondents No. 1 to 9 and Respondent No. 54 the entire select/panel list deserves to be quashed and fresh selection be directed in accordance with the procedure provided in the Common Coal Order and Rule 72 (2) of the Mines Rules, 1955.

9. Shri M. L. Jaiswal, learned Senior counsel with Shri Alk Raj Gautam and Shri Yogesh Pandey, learned Advocates, appearing for the Respondents No. 1, 2 and 4 to 9, per contra, submitted that the circular dated 6.3.1997 was an internal circular and

there was no mention that the candidates should be selected only through the written test. No person subsequent to the circular dated 29/30.4.1997 whereby M.B.A. degree 2 years course was added as qualification, has been selected and appointed for the post of the Welfare Officer. Learned counsel further contended that the total marks fixed for written test were 200 for two papers each of 100 marks and qualifying marks was fixed at 40 in each papers. 40% marks fixed for interview is not contrary to the common coal Order as the common coal Order prescribes for 25 marks in interview and 40 marks out of 240 total marks is much less than 25% of the total marks. The petitioners after having qualified the written test have attended a training programme at S.E.C.L. head quarter, Bilaspur before appearing in the interview. The petitioners having appeared in the examination and entered in the interview are estopped from challenging the selection process. With regard to the roll No. 1/505 and 1/1858, who were absent in the written test but allotted marks in the written test, it was submitted by learned counsel that the Respondent No.4 had clarified vide its letter dated 14.9.1999 that both the candidates having roll No. 1/505 and 1/1858 were absent in the written test and due to the typographical mistake they were allotted marks. In respect of irregularity in roll No.2/1018 of Shri V. N. Shankar of Western Coal Fields Ltd. it was submitted that the Respondent No.4 had clarified to the extent that the examiner while listing the mark of number wise failed to indicate the correct code, as a result in tabulation sheet, wrong code of 1 was typed, instead of 02 against Shri V. N. Shankar. With

regard to the allegation of the petitioner that there was delay of 13 months in declaring the result after destroying the answer sheets before declaring result of written test and interview, learned counsel submitted that the written test was held on 20.7.1997, result was declared on 5.6.1998 and 8.6.1998, interview was held on 25.8.1998 and 5/6.9.1998, panel was approved by the competent authority on 25.9.1998 and the panel expired on 24.9.1999. The first promotion order was issued on 23/26.10.1998 for 50 candidates, second promotion order was issued on 21.12.1998 for 5 candidates, and third promotion order was issued on 22.9.1999 for 4 candidates. Total 59 candidates were appointed in which 57 candidates were of general caste and 2 candidates were of SC/ST caste.

10. Learned Senior counsel further submitted that the petitioners have secured qualifying marks in the written examination and after interview they had been empanelled in the select list but due to non-availability of the vacancy within the validity period of panel i.e. one year from the date of approval by the competent authority i.e. 25.9.1998, the petitioners could not be offered for appointment to the post of Welfare Officer (T). It was submitted that merely not mentioning interview in the internal circular dated 6.3.1997 does not refrain the answering respondents from conducting the interview. The petitioners very well knew that the written test should be followed by interview as the petitioners were directed to go for training programme before appearing in the interview.

11. With regard to the allegation of not following the common coal Order it was submitted that the guidelines and selection

process of welfare/personal discipline is different from other disciplines and the criteria laid down in common coal Order is not applicable to this selection. Learned counsel finally submitted that the petition be dismissed on account of the fact that the petitioners have participated in the entire selection process, having not been appointed due to non-availability of vacancy within the period of existence of the select panel are barred from raising dispute in this petition.

12. Shri Amit Verm, learned counsel appearing for the Respondents No. 18 and 46, Sri Manoj Paranjpe, learned counsel appearing for the Respondent No.37 and Shri P. S. Koshy, learned counsel appearing for the Respondents No. 17, 19, 21, 29, 30, 32, 48, 49, 51 and 52 adopts the submissions made by learned counsel for the Respondents No. 1, 2 and 4 to 9. In addition Shri Koshy submitted that the petitioners cannot be promoted to the post of Welfare Officer in executive cadre E-1 grade in absence of vacancy during the validity period of the panel.

13. I have heard learned counsel appearing for the parties and perused the records appended to the pleadings filed by the parties.

14. Upon perusal of the papers, it is clearly established that the petitioners' along with respondents No. 10 to 53 and other eligible non-executive candidates applied for recruitment to the post of Welfare Officer (Training), pursuant to the circular dated 6.3.1997. Admittedly by corrigendum dated 29/30 April, 1997 (Annexure P/6) the qualification prescribed in the circular dated 6.3.1997 was amended and the non-executives who possessed M.B.A. degree (two years course) with specialization in

personnel management, duly recognized by B.D.S. along with 40% marks were declared as eligible for the post of Welfare Officer (Trainee). The said candidates were thereafter allowed to make an application to the centralize cell CMPDIL, Ranchi/ Respondent No.3 by 10.5.1997 for consideration of selection to the post of Welfare Officer (Trainee).

15. The Respondents No. 1 to 9 have admittedly not complied with the circular dated 16th November, 1984 (Annexure P/26) issued under the provisions of the Common Coal Order dealing with the selection for promotion from non-executive to executive cadre and the learned counsel for the respondents were not in a position to controvert the admitted facts as stated supra, except that 40 marks allotted for interview out of 240 total marks is less than 25% of the total marks when the circular dated 16th November, 1984 which provides for 25 marks for interview in addition to awarding of marks for written test, 40 marks for written test, 10 marks for qualification, 10 marks for experience and 10 marks for A.C.R.s.

16. It is true that no candidate having M.B.A. qualification as prescribed in corrigendum dated 29/30 April, 1997 was found successful.

17. With regard to the averment of irregularity in conduct of examinations and destruction of answer sheets before result of examination was declared, learned counsel for the respondents submit that the discrepancy was a typographical mistake and destruction of answer sheets before declaration of the result of written test and interview does not materially affected the result of the petitioners.

18. The contention of learned counsel for the respondents was that the petitioners would not be permitted to raise the dispute in this petition after they have participated in the selection process and they have been found successful and accordingly, they were put in the panel list. The petitioners could not be appointed to the post of Welfare Officer (T) as the panel list expired on 24.9.1999. Admittedly, there was irregularity in not following the prescribed qualification and prescribed criteria by circular dated 16th November, 1984 and even otherwise amendment of the circular pursuant to which the petitioners along with respondents No. 10 to 53 and others applied, could not have been amended thereafter. In the present case the petitioners did appear in the written test and the petitioners were found successful accordingly they were admittedly put in the panel list. The appointments could not be offered because the validity of the panel list expired on 24.9.1999 and the persons who were above the petitioners were appointed. It is not a case where any person who is down below in the panel list has been appointed and the petitioners have been left out.

19. The select list of successful candidates was declared on 25.9.1998 and the petitioners have filed this petition on 11.12.2000 praying that the respondents No. 1 to 9 be directed to appoint the petitioners to the post of Welfare Officer(T) from the date of issue of first appointment order i.e. 23/26.3.1998.

20. In the case of **Praveen Singh Vs. State of Punjab and others**[1], relied on by learned counsel for the petitioner the Supreme Court in para 8 held as under:-

> "8.....While it is true that the administrative or quasi judicial authority clothed with the power of selection and

appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fair play, good conscience and equity....."

21. In the case of **Coal India Ltd. Vs. Bibhu Ranjan Kumar**[2] the Supreme Court while considering the eligibility qualification for promotion from non-executive cadre to executive cadre in case of the Welfare Officer held as under:-

"11. It is not in dispute before us that the respondent does not have a degree or postgraduate diploma in Social Science including any degree or post-graduate diploma in Sociology/Social Welfare/Work/Service/Science Techniques or Labour Laws/Welfare or Industrial Relations and Personnel Management. The qualification possessed by him is MBA degree (two years course) with 'Personnel Management' as a special paper which on a bare reading of the provision of the Rule does not come within the qualifications provided therein."

22. Learned counsel for the petitioner has further cited decision of the Supreme Court in **Vijay Syal and another Vs. State of Punjab and others**[3] in support of his contention that the criteria of allocating marks on the basis of the written test and interview alone, contrary to the provisions of the circular dated 16.11.1984 (Annexure P/26) is arbitrary and unreasonable. The Supreme Court in para 12 held as under:-

"12.....Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria....."

23. In **Ludhiana Central Cooperative Bank Ltd. Vs. Amrik Singh & others**[4] the Supreme Court in para 8 held as under:-

([1]AIR 2001 S.C. 152, [2]AIR 2001 S.C. 819, [3]AIR 2003 S.C. 4023, [4](2003) 10 S.C.C. 136)

"8.....Even otherwise, it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing....."

24. In **Sardara Singh and others Vs. State of Punjab and others**[5] the Supreme Court in para 4 held as under:-

"4.....Though we find that the procedure adopted by the Collector, in inviting applications is not commendable, but the grievance would be voiced only by the persons who did not have the opportunity to make applications within the prescribed period. But no such grievance could be raised by persons like the appellants. Under those circumstances, the procedure adopted, though irregular, does not vitiate the selection of candidates, ultimately made by the Committee."

25. In **Shankarsan Dash Vs. Union of India**[6] the Supreme Court in para 7 held as under:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of

([5]AIR 1991 S.C. 2248, [6](1991) 3 S.C.C. 47)

Haryana v. Subhash Chander Marwaha1, Neelima Shangla v. State of Haryana[2], or Jatendra Kumar v. State of Punjab[3]."

26. In **K. Jayamohan Vs. State of Kerala and another**[7] the Supreme Court in para 5 held as under:-

"It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference."

27. In **M. P. Electricity Board through the Chief Engineer, M.P.E.B. and another Vs. Virendra Kumar Sharma**[8] the Supreme Court in para 5 held as under:-

"5.....Moreover the validity/currency of panel was for a particular period; that is a salutary principle, behind that Rule so that after the selections are made and appointments to be made may take long time, it is possible that new candidates may have become available who are better or more qualified than those selected, and if they are appointed it would be in the best interests of the institution....."

28. In **Suneeta Aggarwal Vs. State of Haryana and others**[9] the Supreme Court in para 4 held as under:-

"4. We have heard learned counsel for the parties. Narration of the aforestated facts would show that the appellant had disentitled herself to seek relief in the writ petition filed by her before the High Court. The appellant did not challenge the order of the Vice-Chancellor declining to accord approval to her selection and, on the contrary, she applied afresh for

([7]AIR1997SC 2619,[8](2002)9 S.C.C. 650,[9](2000)2 S.C.C. 615)

the said post in response to readvertisement of the post without any kind of protest. Not only did she apply for the post, but she also appeared before the Selection Committee constituted consequent upon readvertisement of the post and that too without any kind of protest, and on the same day she filed a writ petition against the order of the Vice-Chancellor declining to accord his approval and obtained an ad interim order. In the writ petition she also did not disclose that she had applied for the post consequent upon the second advertisement. The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant. The writ petition was rightly dismissed."

29. In **Union of India and another Vs. N. Chandrasekharan and others**[10] the Supreme Court in para 13 held as under:-

"13. We have considered the rival submissions in the light of the facts presented before us. It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report....."

30. In **University of Cochin Vs. N. S. Kanjoonjamma & others**[11] the Supreme Court in para 4 held as under:-

"4. .....Therefore, the non-mention of the special recruitment in the Resolution is of little consequence. As seen, the Syndicate adopted the Rules in relation to the non-

[10](1998) 3 S.C.C. 694, [11](1997) 4 S.C.C. 426

teaching staff of the University. As a consequence, the advertisement came to be made for special recruitment of the Scheduled Castes and Scheduled Tribes to the posts reserved for them. In fact, the first respondent also had applied for and sought selection but remained unsuccessful. Having participated in the selection, she is estopped to challenge the correctness of the procedure....."

31. In **Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others**[12] the Supreme Court in para 32 held as under:-

> 32.....It is remedy which stands barred and it is in this perspective in Om Prakash Shukla v. Akhilesh Kumar Shukla[20] a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

32. From the decisions cited above, it is clear and well established principle of law that the candidates who have participated in the selection process cannot turn around and challenge later the procedure of selection on the ground that the selection process was irregular. Applying the well settled principles of law to the facts of the present case, where the petitioners have not only participated in the selection process comprising of written test and interview but have been found successful in the selection. The petitioners were put in the panel/select list also and as such the petitioners could not be permitted to question the selection process by filing the present petition, when the petitioners could not be appointed on account of any reason whatsoever before expiry of the panel list.

([12](2002) 6 S.C.C. 127)

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33. It is further settled legal position that a candidate who is selected and kept in the waiting list does not acquire any right for appointment. In the present case there is no complaint that any person below the petitioners in the panel list has been appointed.

34. For the reasons stated above, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur